

EXHIBIT B

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ROUGH DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
Plaintiffs,) C.A. No. 04-343(JJF)
v.)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
Defendants.)

Hearing of above matter taken pursuant to notice
before Renee A. Meyers, Registered Professional Reporter
and Notary Public, in the law offices of BLANK ROME,
LLP, 1201 North Market Street, Wilmington, Delaware, on
Tuesday, August 7, 2007, beginning at approximately 3:30
p.m., there being present:

BEFORE:THE HONOROABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 SPECIAL MASTER POPPITI: Mr. Kirk, please.
2 MR. KIRK: Yes, Your Honor. This is Richard
3 Kirk for The Bayard Firm for the plaintiff LG Phillips,
4 LCD Company, Ltd.
5 With me on the line from Washington, from
6 the firm of McKenna, Long & Aldridge, are my colleagues,
7 Cass Christenson, Lori Brzezynski, Rel Ambrozy, and
8 Derek Auito.
9 MS. GAZA: Good afternoon, Your Honor, Anne
10 Gaza from Richards, Layton & Finger on behalf of the
11 Tatung defendants. With me on the line is Fred Cottrell
12 as well as Frank Merideth, Valerie Ho, and Mark Kreisman

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13 from the law firm of Greenberg Traurig.

14 MR. DANBERG: Good afternoon, Your Honor.

15 Ed Danberg at Connolly, Bove. With me is Manuel Nelson
16 and Tracy Roman.

17 SPECIAL MASTER POPPITI: Thank you very
18 much.

19 Let us use the agenda that was sent over
20 yesterday for purposes of addressing the issues
21 contained in that agenda. The first on the agenda is
22 the status of LPL's supplemental document production to
23 ViewSonic, and that was covered in ViewSonic's 7/27
24 submission and LPL's 8/three submission and in

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1 ViewSonic's 8/three submission, and I have that marked
2 as D M3 seven.

3 MR. NELSON: Your Honor, I will be
4 addressing the issues on behalf of ViewSonic. Shall I
5 proceed?

6 SPECIAL MASTER POPPITI: Yes, please.

7 MR. NELSON: Just to recap, Your Honor, how
8 we got here, on June 28th, we had a long hearing where

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9 you ordered LPL to produce documents in response to
10 various requests for production of documents from
11 ViewSonic.

12 On July 13th, we had a hearing because the
13 issue of burden of all that production came up and LPL
14 proposed, as a preliminary matter, to provide a limited
15 production and to see where we'd be based upon the
16 review of that limited production and Your Honor thought
17 that was an acceptable preliminary approach.

18 We have now received approximately 3,000
19 pages of production from LPL. But where we filed
20 ourselves, Your Honor, is that, as you can see from the
21 correspondence that's attached as exhibits to our
22 submissions of August 3rd, we have identified somewhere
23 in the order of 250 pages of drawings that are either
24 illegible or very difficult to read, on the one hand,

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1 and No. 2, while that's not necessarily explicitly
2 stated in our submission, those drawings that are
3 legible aren't -- do not provide sufficient details
4 regarding the physical characteristics of the modules

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5 for us to be able to determine with specificity where
6 fastening elements are on the rear side or from the
7 rearview of a module. And what I mean by that is
8 perhaps I see a little circle with a cross in it that
9 looks like a Phillips head screw, but because that
10 drawing may not have a parts lists, there is no
11 identification of that being, in fact, a screw. Because
12 that particular image is really a two-dimensional
13 drawing from above the back, you don't know what layer
14 that screw, if it is a screw, is placed, is it actually
15 on the rear surface of the module, does it connect the
16 back light unit to the module, or is it in an embedded
17 layer?

18 So we are in a position where we actually
19 aren't able to discern the physical characteristics that
20 we need for this case.

21 So where that leads us today, Your Honor, we
22 didn't submit all of the illegible documents for the
23 August 3rd submission because we didn't think we'd waist
24 your time looking at what's not legible.

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1 SPECIAL MASTER POPPITI: I appreciate that.
2 MR. NELSON: What we want to produce and
3 what we proposed to LPL is we really want our samples of
4 their products. The reason we want samples is because
5 there is no denying what the physical characteristics of
6 that module are once we have the samples in our hand.
7 We have produced samples to LPL for inspection or
8 purpose and we have done it for somewhere in the order
9 of 150 monitors. We are just asking that they provide
10 samples for the products that they have identified in
11 their documents. We are going to still continue along
12 with the preliminary proposal that Your Honor accepted
13 that was made by LPL, but we'd like to add to that list
14 of what's being produced samples of the products, both
15 the prior art products and the products that were made,
16 sold, offered for sale after 1999. And then just to tie
17 this together, I think one of the issues might be
18 whether we have actually a request for production of
19 samples and I don't know if Your Honor recalls, but
20 during the June 28th hearing, we discussed ViewSonic's
21 request for production No. 128. And request for
22 production No. 128 actually does request samples. At
23 the time of the June 28th hearing, you accepted LPL's

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24 objection that that request was overly broad. However,

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1 once we started going down the path of narrowing the
2 production because of burden on -- when we actually
3 adopted LPL's position on July 13th, in my opinion, and
4 out of fairness, we should have actually gone back and
5 revisited request for production 128, which involves the
6 request for samples because, really, without the
7 samples, we have got a lot of documents that are, A,
8 either illegible or, B, do not give us the features that
9 we need to be able to have our expert identify what are
10 the precise fastening elements or items that could be
11 fastening elements on the rear surface of the LCD
12 module.

13 That's the first part of our petition; we
14 request samples of their products.

15 SPECIAL MASTER POPPITI: Let me ask this
16 QUESTION: I gather, based on the communication of the
17 correspondence that I have read and I expect, based on
18 what you are telling me now, that the clarity of the
19 production, on paper, is not going to improve? Is that

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20 what I am hearing LPL say? What you have is what you
21 have given and the clarity is not going to get any
22 better with looking at other documents?
23 MR. CHRISTENSON: Your Honor, the answer to
24 that question is yes, in part, and no, in part.

8

1 In part, that's correct. We have documents
2 for which we have produced the best available copies and
3 they show what they show and we cannot provide better
4 copies. In some cases, we have been able to provide
5 better copies and we are in the process now of providing
6 additional better copies for certain pages that were
7 just recently identified by ViewSonic as being some of
8 the pages they say are not legible, and that's part of
9 the basis for them seeking module samples at this point.
10 So I think some of those issues are likely to be cured
11 but not all of those issues are likely to be cured.
12 I think it's also important to point out
13 that the documents that we have do provide -- that we
14 have produced do provide the type of information that
15 was requested in the document request, and that

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16 information relates to the parts of the modules that LPL
17 makes and how those modules are assembled.
18 SPECIAL MASTER POPPITI: Let me make an
19 observation about that, the last statement. I am
20 certainly not in a position, based on what I have been
21 given, to make that judgment, and nor would I expect,
22 and I could be wrong about this, that you want to be
23 sitting with me in a courtroom and literally pointing
24 and click to go show me what you have just said because

9

1 I would expect that that labor and that -- I would
2 expect it would be, No. 1, intense, and unnecessary; is
3 that a fair comment?

4 MR. CHRISTENSON: Your Honor, I think that
5 sounds like a fair comment. We would want to be as
6 efficient as we can be and I think your observations are
7 accurate.

8 SPECIAL MASTER POPPITI: So let me see if I
9 understand. You are making, and I want some definition
10 to this, you are making best efforts to give best copy?
11 And that has not -- the roll out is not complete yet?

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12 MR. CHRISTENSON: That's correct. We have
13 produced, in some cases, we were able to go back for
14 documents identified initially by ViewSonic, we were
15 able to, essentially, reformat those documents on our
16 end and in a way that provided better resolution and
17 produce those copies.

18 Some documents are what they are. We don't
19 have any way to improve the legibility. Then there are
20 some additional documents recently identified that we
21 are going to reproduce in a different format that we
22 think would give better legibility.

23 SPECIAL MASTER POPPITI: And have you all
24 taken the opportunity to go through the documents for

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1 purposes of determining that category they are what they
2 are, or is that yet to be done?

3 MR. CHRISTENSON: Your Honor, I believe that
4 those documents were identified by ViewSonic in a letter
5 dated August 2nd at page 3.

6 SPECIAL MASTER POPPITI: Right.

7 MR. CHRISTENSON: And those are the

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8 documents that we have been working to provide improved
9 copies.

10 SPECIAL MASTER POPPITI: I expect, and tell
11 me, from ViewSonic's perspective, that that process
12 should certainly continue, and I think I just heard both
13 of you saying that it is continuing and I expect you
14 both agree it should continue?

15 MR. NELSON: Yes. From ViewSonic's
16 perspective, the improved legibility should continue,
17 but that doesn't foreclose our need for samples. In
18 fact, if you could, I'd like to turn to Exhibit E of
19 LPL's August 3rd submission.

20 SPECIAL MASTER POPPITI: Exhibit E?

21 MR. NELSON: Yeah. We can actually start
22 with Exhibit C if you'd like.

23 THE COURT: Start wherever you tell me to
24 start.

11

1 MR. NELSON: Why don't we start with Exhibit
2 C.

3 SPECIAL MASTER POPPITI: I am at Exhibit C

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4 and that is correspondence dated July the 31st, 2007,
5 from Mr. Auito.

6 MR. NELSON: Correct. And in Exhibit C, you
7 will see that they produced replacement drawings for
8 roughly 40 pages we identified, 40 pages of drawings
9 that we identified. They were able to provide
10 replacement drawings. Just so Your Honor is aware, we
11 identified somewhere along the order of 77 pages of
12 drawings that needed to be replaced, but they were able
13 to replace 40 of those 77 drawings. The rest were not
14 be able to be replaced. That bates span, if you notice,
15 is LPL 214 five to 21187. That's the bates scan of
16 replacement drawings, 214 five to 21187. It will
17 include the No. 21152.

18 SPECIAL MASTER POPPITI: I see that.

19 MR. NELSON: If we turn to exhibit E.

20 SPECIAL MASTER POPPITI: Okay.

21 MR. NELSON: Exhibit E is Bates No. 21152.
22 It's one of those replacement drawings. This is the
23 best they are going to be able to produce with respect
24 to that drawing.

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1 SPECIAL MASTER POPPITI: I can tell you I
2 looked at it and I can tell you it wasn't, from this lay
3 person's eye, it wasn't very helpful and I gather you
4 are telling me, from your trained eye, it's not helpful.

5 MR. NELSON: Not only not helpful, there is
6 no date on the document, there's no model on the
7 document. I can't tell where the screws are. It's
8 absolutely not helpful. The replacement documents not
9 going to save the day in this case. And one other, if
10 you would like me to point out another example that's
11 been submitted by LPL in their exhibits, I will be glad
12 to do so.

13 SPECIAL MASTER POPPITI: Okay.

14 MR. NELSON: If you want to turn to Exhibit
15 F, Your Honor, the very next exhibit, on August 3rd, we
16 have been -- I don't know if Your Honor recalls, we have
17 been requesting documents that showed the assembly of
18 LPL's modules for a long time now, and that's actually
19 the crux of why we want the samples is because we can't
20 tell how these modules actually assembled from
21 two-dimensional figures. Exhibit F is an example after
22 service manual that they have just produced on August

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23 3rd. If we turn to what is page 10 of Exhibit F, pages
24 10 and 11.

13

1 SPECIAL MASTER POPPITI: I am there, 10 and
2 11.

3 MR. NELSON: 010 is the best exploded view
4 document that they have ever produced. And 11 happens
5 to be the parts list that corresponds with that exploded
6 view, so it's helpful because we get to see that item
7 No. 7 in the exploded view is actually a screw there and
8 are a couple of the screws. So, this is actually a
9 reasonable document because it does actually break it
10 down into three dimensions and so we can tell what layer
11 that screw son. Unfortunately, Your Honor, we have been
12 advised that they only have nine of these service
13 manuals, that they have produced all of the service
14 manuals that correspond to the top 10 products that they
15 have since 1999. And just by simple a arithmetic, that
16 would be somewhere on the order of more than 50
17 products, so they have produced nine service manuals
18 and, of course, they don't have any service manuals for

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19 any of the products that were sold prior to 1999 so that
20 would be prior art.

21 So, this is best document I have seen in
22 LPL's production, and I only have nine of them.

23 SPECIAL MASTER POPPITI: Okay. Well, then,
24 let's turn to the discussion from earlier in the day,

14

1 but please remind me what the -- I am looking at the
2 transcript where the request for production 128 was
3 dealt with, and if you would point me to the page
4 reference that I have already seen today, but,
5 unfortunately, I didn't --

6 MR. NELSON: I didn't hear the question. If
7 I would point to the page reference?

8 SPECIAL MASTER POPPITI: Reference to where
9 128 was.

10 MR. CHRISTENSON: Your Honor, that should
11 be, I believe, at page 128 into 129 of the transcript.

12 MR. NELSON: Your Honor, what you also want
13 to look at is the actual document request, itself.

14 SPECIAL MASTER POPPITI: I have that in

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15 front of me.

16 MR. NELSON: Okay.

17 SPECIAL MASTER POPPITI: Let me make this

18 observation. I think it's fair to say that the context

19 of what we were doing when we were looking at the

20 theories 126, 127, and 128, it was for purposes of, No.

21 1, my making a ruling, and then it was also for the

22 purpose of you all taking those rulings, having some

23 discussion about the scope of the rulings, and coming up

24 with a path forward is No. 1; is that a fair statement

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1 from your respective positions?

2 MR. CHRISTENSON: Your Honor, yes. On page

3 130 at the top, you clearly state, "I will require a

4 meet and confer on the scope of 126 and 127 but not with

5 respect to 128. "

6 SPECIAL MASTER POPPITI: Correct.

7 MR. NELSON: Yes.

8 SPECIAL MASTER POPPITI: And I think it's

9 also fair to say that when we were looking at 128 and

10 looking at 128 now, one 28 eight, in its preamble

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11 phrase, if you will, says, "All information from January
12 1, 1997," and by virtue of that language, I did make the
13 ruling that, with respect to all information, that was
14 simply too broad, it lacked precision, there was no
15 definition, and I wasn't going to entertain that. And I
16 think that's clear from the transcript.

17 What is also clear, by virtue of it not
18 being part of the transcript, unless somebody can point
19 me to the discussion that we had, and if we had it, I
20 simply don't recall it and I didn't comb the transcript
21 for purposes of finding it, there was no discussion in
22 this transcript of the last phrase in the interrogatory
23 which says, "Including a Sam of each such flat panel
24 display device." Is that fair?

16

1 MR. NELSON: That's fair, Your Honor.

2 MR. CHRISTENSON: Your Honor, I agree with
3 that as well, I think, and Mr. Miller, from ViewSonic,
4 at page 125, describes request one 28 in terms of what
5 was being sought, and he refers to information relating
6 to etcetera, etcetera.

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7 SPECIAL MASTER POPPITI: Right.

8 MR. CHRISTENSON: It does not refer there at
9 all to samples and modules and, presumably, that's why
10 it was not addressed.

11 SPECIAL MASTER POPPITI: Right. So, I mean,
12 I think, for purposes of the record that I am dealing
13 with, the issue with respect to the information, that
14 is, the documents that were being sought, was squarely
15 addressed, discussed, I disposed of it by virtue of
16 issuing a ruling. And with respect to the request for
17 the opportunity to have request samples, I didn't deal
18 with it. It wasn't raised. And I -- if you want to be
19 heard on that issue, in other words, why is it unfair to
20 raise the issue of samples now given the fact that what
21 we -- what I think I am faced with is not an
22 insignificant amount of documents that don't do what,
23 perhaps, each of you expect that they would do? Why is
24 it unfair to look at the issue of samples? And maybe

17

1 it's not. Maybe you both agree it's not. I know
2 ViewSonic agrees it's not.

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3 MR. CHRISTENSON: Your Honor, from LPL's
4 perspective, I think that your premise there was that
5 both sides feel that our document production didn't do
6 what we had expected, but I respectfully disagree
7 because --

8 SPECIAL MASTER POPPITI: How do I measure
9 that, Mr. Christenson, without sitting down with you and
10 whether, you know, whether it's going through the one
11 good one and the one that is indescribable to me, how
12 many of those do I have to see before I make a judgment
13 that we should be looking at samples here? All of them?
14 A sampling of them?

15 MR. CHRISTENSON: Your Honor, that is
16 actually a question that I discussed with ViewSonic:
17 What specific samples were they requesting from us? And
18 they had stated they would clarify that. Initially, in
19 the July 27th submission to Your Honor from ViewSonic,
20 on page 2 of that submission, they are requesting
21 samples for what they call prior art products, which are
22 the pre1999 products.

23 SPECIAL MASTER POPPITI: Right.

24 MR. CHRISTENSON: And, so, we had

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1 investigated that and determined that LPL does not
2 maintain an inventory, if you will, of old modules from
3 that time period where they could provide those modules.
4 And, so, the issue that was submitted to you on the July
5 27th letter, I think, is moot because we can't provide
6 the, what they call "prior art module samples." They
7 then, very recently, shifted gears away from that and
8 now they want us to produce samples, apparently, for all
9 the products since 1998 that are reflected in our
10 document production. But, you know, the -- I think it's
11 telling that their initial request to Your Honor in the
12 July 27th submission was for the pre1999 modules, and
13 only when we determined we don't have those did they
14 then say they want the more recent modules.

15 MS. ROMAN: Your Honor, this is trace roam
16 on behalf of ViewSonic. Just to be fair, our July 27th
17 submission did make it clear that we were doing the best
18 we could to review the information that had been
19 produced at that point in time. Naturally, our primary
20 focus from that information that had been produced was
21 to start with the prior art documents that had been

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22 produced. And, so, what we are giving you an update for
23 in the July 27th status report fell under a heading
24 "Lack of information regarding the prior art products."

19

1 At that time, based on what we could review, we knew
2 that the documents produced for the prior art products
3 were insufficient and that we'd have to be looking at
4 samples.

5 During the meet and confer that I had with
6 Mr. Christenson, he did inquire, Well, are you just
7 limiting this to prior art products?, because it's
8 unclear from your submission, or are you talking about
9 samples for all products? So there was an ambiguity on
10 both sides. There was no clear understanding on their
11 part that it was only going to be prior art products.
12 And I am sorry if it communicated that but we did try to
13 make it clear in our July 27th submission that we
14 weren't able to get through everything that had been
15 produced despite how fast we were trying to go through
16 it.

17 So, during that meet and confer, I did say

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18 that I would look into that and try and clarify it
19 because I was not the one who had been reviewing the
20 documents, so it was unclear to me whether the documents
21 that had been produced relating to post patent filing
22 products were sufficient to disclose the information
23 that we needed to -- in order to resolve the issues for
24 the case.

20

1 SPECIAL MASTER POPPITI: Mr. Christenson, I
2 don't see this as sandbagging. I mean, this is
3 production that is coming at the time it's coming. It's
4 production that I gather was difficult to get through
5 because some of it was simply not readable, whether "not
6 readable" means it was not readable or lack of
7 information or it was unclear or it was a bad copy, but
8 it falls into the category that it wasn't worth
9 anything.

10 My concern is -- there are two observations
11 I will make. No. 1, I am satisfied that the issue of
12 samples is something that I didn't rule on. No. 2, I am
13 inclined to -- by "inclined," I will, after I have some

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14 further discussion with you, provide the opportunity to
15 receive samples, and the path forward to that, I want
16 some degree of assurance here that either I am going to
17 have to dive into the production with your respective
18 assistance so I can see for myself and I am just not
19 sure that that's a good utilization of your time, it's
20 not a good utilization of my time, and I am not sure
21 that the resources that you are going to spend on all of
22 that makes a great deal of sense.

23 I would prefer that you forming and I have
24 done this before, some agreement with respect to

21

1 samples, understanding that I will make some decision
2 with respect to that O them, and if I have to tell you,
3 on a date certain, not in a distant future, we have got
4 to gather in a courtroom and you have got to start
5 pointing and clicking for me, we are going to do that.

6 "

7 MR. CHRISTENSON: Your Honor I think I am
8 clear on what you expect and we are still waiting to
9 hear back from LPL to determine, you know, to what

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10 extent the more recent products may exist in Sam form
11 for which we can make a production.

12 I believe, my understanding is, but I'd like
13 to confirm this, that ViewSonic is amenable to paying
14 for the costs associated with the samples that we would
15 be producing?

16 MS. ROMAN: That is correct. On the
17 expedite it, Cass, if you just provide cost information
18 with a list of products that are available, that would
19 help to speed things along.

20 MR. CHRISTENSON: , so Your Honor, we will
21 proceed as you suggested. We will complete our
22 investigation to determine what is available as quickly
23 as we can and we will then promptly discuss that with
24 ViewSonic toward a resolution.

22

1 SPECIAL MASTER POPPITI: My remaining
2 question, then, is: Do I need to establish some date
3 parameter, some deadline, some time frames to work
4 within? Do you all want to do that and get back to me
5 and tell me to determine a deadline or what the dates

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6 forward are?

7 MS. ROMAN: Your Honor, it's difficult for
8 me to propose a date not knowing the difficulties that
9 Mr. Christenson faces with getting the information he
10 needs from his client. But as you are obviously well
11 aware, we have the August 28th filing for the opening
12 expert report and we do need that in advance of that so
13 our expert can do his evaluation and prepare the report.
14 So we'd certainly like it as quickly and expeditiously
15 as we can.

16 SPECIAL MASTER POPPITI: This is what I'd
17 like to be done: Mr. Christenson, if you could, in
18 communication with your client, discuss what we have
19 just talked about and within the next several days,
20 after having communication with your client, propose a
21 date when you believe you are going to be able to finish
22 the work, the date will be, in my view, a good faith
23 target, and if the date has to be flipped because it's
24 taking more time, then I am happy to hear that, that

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1 it's taking more time and the date has to be flipped and

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2 I will honor that taking you at your word. But I think
3 it's important to establish some target date going
4 forward that represents that good faith effort because
5 of the deadline for expert reports that is rapidly
6 approaching.

7 MR. CHRISTENSON: Your Honor, I certainly
8 will proceed as you just instructed. I think that
9 sounds similar to the approach we took last time and we
10 were able to -- I think that worked successfully.

11 Are you asking for a date right now or are
12 you asking us to --

13 SPECIAL MASTER POPPITI: I am asking you to
14 have conversation with your client or with whomever you
15 need to talk with about the information you need to
16 gather for purposes of determining what, if any, samples
17 are available.

18 MR. CHRISTENSON: Yes, Your Honor. So we
19 will do that very promptly, and then we can, we will set
20 a timetable and we can make you aware of that.

21 MR. MERIDETH: Just so it's clear, we are
22 talking about inclusive of prior art; am I correct?

23 SPECIAL MASTER POPPITI: Thank you,
24 Mr. Merideth.

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1 MR. CHRISTENSON: With respect to the older
2 models, which are the 1997, 1998 models, as I stated
3 before, there is no inventory of products from which we
4 could produce samples going back that far.

5 My understanding -- and that's an issue we
6 had initially investigated when we received the July 27
7 letter. What I don't know right now is: I am assuming
8 there is some recent product availability of samples. I
9 just don't know the extent of that availability or how
10 far back it goes. But I am checking for the full time
11 period.

12 MR. MERIDETH: I just want to make it clear
13 that the one product that we are particularly concerned
14 about, from Tatung's standpoint, is not the '97 or '98
15 product but is a 1996 product that we identified in our
16 letter of August 3, 2007, and similar products from that
17 time period. During the testimony of Mr. Kim, he
18 indicated that there was a library of products, and I
19 assume that you are going to check or have your client
20 check in that library of products, and if stuff has been

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21 disposed of we will have a log of what was diseases

22 posed of, and we need to get that.

23 Obviously, this particular module, the

24 LC56N1 is a particularly important piece of prior art.

25

1 We were able to obtain a so many of that, and you can

2 see from the August 3rd letter how important the Sam is

3 versus the incomplete drawing that was provided. And we

4 are assuming that you are going to go back and find that

5 data or tell us why it can't be found and/or has been

6 disposed of.

7 SPECIAL MASTER POPPITI: Mr. Christenson.

8 MR. CHRISTENSON: Yes, Your Honor. The --

9 as I said, we are going to look back for samples for the

10 entire time period. I will reconfirm as to the earlier

11 products, and if Mr. Merideth could give us the citation

12 to the library of products that he referred to, that

13 would be helpful because I think he might be

14 misconstruing the testimony with respect to the

15 purported library products. But we will work through

16 those issues, we will check with LPL, we will continue

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17 our investigation as promptly as we can, and whatever we
18 can make available, we will try to work out with the
19 other side and reach a resolution very promptly.

20 SPECIAL MASTER POPPITI: What I do want is
21 if there are any stumbling blocks along the way, I want
22 you to arrange for a teleconference to get me on the
23 line.

24 MR. MERIDETH: Very well, Your Honor.

26

1 SPECIAL MASTER POPPITI: Next.

2 MS. ROMAN: I think the next issue flows
3 directly from this very same conversation relates to
4 whether or not the defendants will be allowed to depose
5 a 30(b)(6) witness on behalf of LPL regarding the
6 documents that have been produced and the issues that
7 arise out of those documents.

8 MR. CHRISTENSON: Your Honor, just to be
9 clear, this is an issue that we feel is not ripe for
10 discussion today. We don't think this is a part of the
11 document production set of issues that was submitted.
12 It's an issue that we have been trying to discuss and we

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13 are continuing to discuss with the other side, but we
14 don't think we are at the point right now where it's
15 appropriate to submit to Your Honor because it's not
16 clear to us specifically all the issues that are being
17 sought for a deposition, No. 1, from ViewSonic, and we
18 had a discussion yesterday with ViewSonic where they
19 said that there are some topics that they think they
20 want to re-pursue with LPL that were previously the
21 subject of testimony and then they also let us know
22 yesterday, for the first time, there may be additional
23 topics and additional deposition notices that they
24 intend to issue. We haven't seen any of that

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1 information.

2 They have agreed to provide us the topics,
3 but so far we don't have that information. We learned
4 yesterday for the first time that Tatung apparently also
5 seeks the deposition and we don't know anything about
6 the topics that Tatung is seeking testimony on.

7 MR. MERIDETH: I can clarify that.

8 Specifically, the topics that we feel that we are

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9 entitled the 30th B six testimony on are topic No. 8 and
10 topic No. 23 of the prior 30(b)(6) notices.

11 SPECIAL MASTER POPPITI: And I don't have
12 that in front of me Mr. Merideth.

13 MR. MERIDETH: It refers specifically to
14 prior art.

15 SPECIAL MASTER POPPITI: Okay.

16 MR. MERIDETH: And Mr. Kim and Mr. Chung
17 were unable to adequately respond to those questions,
18 and, indeed, thought that one of the items of prior art
19 or suggested that one of the items of prior art was a
20 clock radio. And they were inadequate -- they were not
21 prepared to discuss these items and we were not in a
22 position to question them, obviously, because they
23 hadn't produced the data.

24 We now have it, and it is very clear that,

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1 at least as to this one product, the LCO56N1, that we
2 are entitled to question about that.

3 SPECIAL MASTER POPPITI: Let me ask this
4 question, or perhaps make this observation. I don't

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5 think that there should be any question that the
6 production, as it is continuing, we all had this
7 conversation many, many months ago where I suggested to
8 you that I would not be surprised, No. 1, that there
9 would be a need for additional discovery, and I said
10 that I would be open to that.

11 It seems to me the best things to do, in
12 light of the deadline, is to, again, without knowing
13 what the topics are going to be other than the go that
14 were just identified, is to set a deadline for there to
15 be some definition as to what you are all talking about
16 so that if there is a dispute, I can do whatever I need
17 to do to help to resolve the dispute.

18 I don't think I have the kind of information
19 that would permit me to give other than a guidance or an
20 advisory, and I don't think that's appropriate.

21 I do think, however, that, given my
22 responsibility to manage, we should be talking about a
23 short time frame in terms of coming up with the topics,
24 of coming up with the time frame, and coming up with a

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1 number of notices that are going to be issued.

2 MS. ROMAN: Your Honor, I don't disagree,
3 and this is why, during the meet and confer yesterday, I
4 agreed to work as quickly as I could to get those topics
5 pulled together for Mr. Christenson. As I did point out
6 to him, though, it's a little difficult to be all
7 inclusive about the topics with out being,
8 unfortunately, overly broad, without knowing what the I
9 will illegible documents that are going to be replaced
10 are going to looks like and what information they might
11 yield or questions they might raise. We had two issues
12 during our meet and confer and I think the only reason
13 it was actually being discussed with you today is
14 because it seemed like we were at a stand still as to
15 whether a deposition was even appropriate, period,
16 regardless of what the topics might be.

17 We did identify categories or general
18 information topics in both our July 27 and our August
19 3rd submission, and the specific topics that we would
20 notice would fall within that scope, at least, and there
21 might be a couple of others, and those included not only
22 the issue of damages, the invalidity of the patent based
23 on the documents, potential inequitable conduct made by

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24 the documents, and the structure of products, the

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1 knowledge of prior art, statements made to the
2 examiners, so I have been going through our previous
3 deposition notices and pulling out the topics that apply
4 to that. But they certainly fall within the scope of at
5 least those that we have listed in there. And during
6 our meet and confer, as I understand it, and Mr.
7 Christiana, certainly please correct me if I was wrong,
8 but if as I understood it, there was certainly an
9 objection to presenting any witness for deposition based
10 on the general topics that we had put forth in those
11 submissions. And I am not sure providing topics that
12 fall within the scope of that going to get us any
13 further along, but I am happy to agree to provide that
14 information by tomorrow with the topics specifically
15 noticed so that we can move this issue along.

16 SPECIAL MASTER POPPITI: Mr. Christenson.

17 MR. CHRISTENSON: Yes. It is helpful to see
18 what the topics are, as we had discussed, because
19 depending on topic, No. 1, without knowing the topics,

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20 it's hard for us to take a position, specifically, and
21 know what is or is not appropriate. And furthermore,
22 some of these topics we might be able to resolve short
23 of a deposition and that's something we have indicated
24 we are willing to do, you know, an obvious example is

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1 related to authenticity of documents. So I think it's
2 important not to put the cart before the horses and to
3 know what are the topics specifically and then we can
4 discuss those topics and see to what extent we can
5 resolve the issues.

6 MS. ROMAN: Well, I can provide you the
7 topics by close of business tomorrow California time. I
8 can try to get it to you sooner, but I know that I have
9 got some people traveling that I have to communicate
10 with on this, so I will do my best to get it before
11 close of business, but certainly by close of business.

12 MR. MERIDETH: We will cooperate with
13 Ms. Roman so we give one combined list. I think it's
14 the easiest way to do it.

15 SPECIAL MASTER POPPITI: That makes a great

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16 deal of sense. And turn around to me, I want, again,
17 without setting any deadline, the message has to be it
18 has to happen quickly in light of the deadlines that are
19 rapidly approaching. Okay?

20 MS. ROMAN: In that regard, Cass, I am
21 available any day Thursday and Friday for a meet and
22 confer regarding it, so just let me know once you have
23 had a chance to review the topics, we can make ourselves
24 available.

32

1 MR. CHRISTENSON: Very good. Thank you.

2 SPECIAL MASTER POPPITI: The only thing you
3 may want to be considering, then, is we may want, and
4 somebody remind me of this at the end of our work
5 together today, we may want to set a date, whether it's
6 called a status date or whether, call it what we want,
7 with me so that there is something to target, if you
8 will.

9 MS. ROMAN: Yes, Your Honor. I believe that
10 would be appropriate, and I, unfortunately, think we
11 have to put it as early as Monday because if we are

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12 going to have a deposition with a witness who is
13 overseas, we are going to be making plans and scheduling
14 things soon.

15 SPECIAL MASTER POPPITI: Well, then, let's
16 just pause for a moment. I can do Monday, the 13th. It
17 would have to be later in the day and I am not going to
18 be able to do anything with whatever submittals you have
19 until after Friday. So if there were submittals even
20 late Friday, that's fine, or if you expect they are
21 going to be, not going to be significant in terms of the
22 amount of information, if you get them to me first thing
23 our time, on the East Coast, on the 13th, then I should
24 have sufficient time to look at them and prepare for

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1 something around 3:30 or 4:00 on the 13th.

2 MR. CHRISTENSON: Your Honor, just so I
3 understand, working backwards; the intent, then, to try
4 to have a discussion with you scheduled for Monday --

5 SPECIAL MASTER POPPITI: If there are issues
6 remaining, correct.

7 MR. CHRISTENSON: And submissions, would you

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8 want short submissions or do you have a preference as to
9 that?

10 SPECIAL MASTER POPPITI: I think a short
11 submission the morning of should be sufficient.

12 MR. CHRISTENSON: The morning of the 13th,
13 Your Honor?

14 SPECIAL MASTER POPPITI: Yes. Or -- either
15 the morning of the 13th or close of business on the
16 17th.

17 MR. CHRISTENSON: I just think it might
18 depend on when we are able to have the meet and confer
19 and when we are able to really crystalize the issues
20 which might not be until the end of this week.

21 SPECIAL MASTER POPPITI: That's fine.
22 That's why I am saying the 13th is fine.

23 MR. CHRISTENSON: Very well. Thank you,
24 Your Honor.

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1 SPECIAL MASTER POPPITI: Why don't we do
2 this, then: We will schedule, be on the safe side and
3 schedule it at 4:30, does that give you more than enough

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4 time, even after submissions, to try to discuss it?

5 MR. CHRISTENSON: That's fine, Your Honor.

6 Thank you.

7 MS. ROMAN: That time is fine for ViewSonic,

8 Your Honor.

9 SPECIAL MASTER POPPITI: All right. Next,
10 please.

11 MR. CHRISTENSON: Your Honor, I don't know
12 if there are any other issues. I think we have covered
13 the issues in ViewSonic's submission, and if that's
14 true, I can address LPL's submission concerning the OEM
15 documents.

16 MS. ROMAN: Yes, we believe the issues have
17 been covered.

18 SPECIAL MASTER POPPITI: Okay. Let me just
19 move some things aside. Give me one moment, please. I
20 am going to put you on mute.

21 The next is the status of ViewSonic
22 production of documents from OEMs.

23 MR. CHRISTENSON: Yes, Your Honor. This
24 relates to the documents that ViewSonic was ordered to

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1 produce from its OEM suppliers and the OEM suppliers, as
2 you may recall, are the companies that provide ViewSonic
3 with the display products that ViewSonic sells in the
4 United States which include various accused products
5 relevant to this case.

6 ViewSonic has taken the position that the
7 most relevant or most of the relevant documents that
8 relate to the assembly of their products and the issues
9 in this case are not in ViewSonic's direct custody, but,
10 rather, are in the possession of ViewSonic's OEMs. And
11 in February of 2007, Your Honor concluded that, under
12 the contracts between ViewSonic and the OEMs, ViewSonic
13 has control over the documents by virtue of clear
14 contractual provision that provide ViewSonic with the
15 right to demand and obtain the documents from its OEMs.

16 Your Honor issued a ruling concluding that
17 ViewSonic should produce those documents and that was
18 appealed to the Court.

19 Recently, judge foreign has adopted Your
20 Honor's rulings, and the reasoning set forth in your
21 rulings and confirmed that those documents should be
22 produced. The deadline for production was July 18, I

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23 believe.

24 We received a very limited production

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1 consisting of approximately 180 pages, all of which
2 related to a single OEM company, Arima, A-r-i-m-a,
3 Computer Corporation. There were approximately 17 other
4 OEM suppliers that ViewSonic contacted for all of the
5 other suppliers; however, we have not received any
6 document production, and for only one of those OEMs did
7 we receive any response to ViewSonic's request for
8 documents, and that was a -- we noted that in a
9 footnote. One of the OEMs sent a letter to ViewSonic
10 refusing to produce documents, saying there was no
11 operative agreement between that OEM and ViewSonic.

12 But for the other OEMs that were presumably
13 contact by ViewSonic, there is no response that we have
14 seen, at least no written response.

15 ViewSonic originally produced copies of the
16 correspondence that were not signed or dated. They
17 subsequently produced topics of what appear to be the
18 actual correspondence between ViewSonic and the OEMs,

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19 and what we have determined, reviewing that
20 correspondence, is that ViewSonic -- we think that the
21 request for documents that ViewSonic sent to the OEMs is
22 not sufficient. There is no question, at this point,
23 that ViewSonic has a contractual right to obtain the
24 documents. I am, in reviewing the record, it appears

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1 clear to me that the expectation was that ViewSonic
2 would make a demand for the documents, and when we
3 reviewed the March 2007 letter, it was a form letter
4 March 2007 that ViewSonic sent. It is simply a request.
5 It's not a true legal demand for documents. It does not
6 refer to, specifically, the OEM agreement. It does not
7 specifically invoke any rights under the agreement.
8 And, so, we feel -- and given the context of the letter,
9 which includes that ViewSonic was objecting, that it
10 states that the documents were due to be produced in
11 February, where is letter was dated in March, which
12 suggests it could be construed as moot, and for the
13 other reasons we set forth in our August 3rd letter to
14 Your Honor, we feel that ViewSonic has not taken

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15 sufficient steps to obtain the documents paragraph, so
16 what we are asking is for Your Honor to require
17 ViewSonic to make a more appropriate and clear demand
18 exercising the right that is they have under those
19 contracts so that we can get these very important
20 documents that ViewSonic does not have.

21 We learned yesterday from ViewSonic's
22 counsel that, apparently, ViewSonic is no N the process
23 of preparing a follow-up letter to the OEMs, but we
24 haven't seen that letter. I am not sure if that letter

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1 has gone out or not. And we are very concerned, at this
2 point, with the status of the OEM production.

3 MS. ROMAN: Your Honor, unfortunately, I did
4 indicate to Mr. Christenson, that, while I am trying to
5 confirm whether that second letter has gone out, the
6 general counsels for ViewSonic is traveling and I
7 haven't been able to get confirmation of it or not. But
8 this was certainly one of the primary concerns at the
9 time when we discussed this at, the I believe it was the
10 January 3rd hearing, we were concerned with what was

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11 going to happen once we requested the documents and the
12 OEMs chose to ignore us, that we would be in a difficult
13 position because how do we compel production of the
14 documents from the OEMs?

15 A letter that went out to the OEMs very
16 clearly stated, "While we intend to appeal this order,
17 we must collect and prepare the requested documents for
18 production. Accordingly, ViewSonic hereby requests that
19 you immediately provide us with copies of all responsive
20 documents for production, to wit, LPL, that relate to
21 any of the ViewSonic products set forth on the
22 accompanying lists." We even indicated to them that the
23 documents needed to be provided in their native format
24 and include any electronic data.

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1 Certainly, the letter did not reference the
2 contract, but it didn't need to. Your Honor's order
3 clearly referenced the contract, and as Mr. Christenson
4 just pointed out, one of the OEMs did respond that he
5 had read through Your Honor's order, which was clearly
6 based on the existence of the written contract

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7 compelling the production of the documents and since no
8 contract existed, they weren't going to respond.

9 So, we believe that we have complied with
10 the order as it was written and that the follow-up after
11 it, that I have mentioned to Mr. Christenson, that I
12 believe was taking place to send another letter,
13 shouldn't determine whether or not the effort that has
14 already been made is already sufficient.

15 SPECIAL MASTER POPPITI: So you are
16 suggesting I don't need to see the second letter?

17 MS. ROMAN: No, Your Honor. It's my
18 understanding that the second letter was simply a
19 follow-up based on the fact that the Court had accepted
20 Your Honor's report and recommendation and it was simply
21 to remind them that this had been done and that we
22 needed these documents.

23 I don't think, honestly, that it would have
24 made a difference for the production of the documents

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1 given the very clear instruction in our first letter
2 which said we need to collect these and you need to

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3 immediately provide us with copies of them and the lack
4 of response from the OEMs.

5 SPECIAL MASTER POPPITI: Well, let me
6 suggest this: I would expect that if any one of you,
7 any one of you that is involved with this teleconference
8 were asked to make the demand or the request consistent
9 with an order of the Court, that we would wind up with
10 -- and I didn't count the number of us participating --
11 we would wind up with a different product from each one
12 of us. Some may couch it in terms of, I demanded by
13 virtue of our contractual relationship, some may couch
14 it in terms of, CAM here is the Court's order, send it
15 to me. My concern, as articulated in the January 3rd
16 hearing, as I quoted in LPL's correspondence of August
17 3rd, and I expect it would be helpful to read it for
18 purposes of today's record, and I realize this is only a
19 part of it and I did not go back to the January 3rd
20 hearing to revisit any of other language. If you think
21 it's important to do that, then please point out that
22 language and I will put the transcript.

23 But the language quoted in LPL's letter for
24 submittal of August 3rd, "This ends up back on my desk

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1 with respect to the third parties abrogating their
2 responsibility under the contract. The only thing I
3 certainly would expect I would kindly ask for is the
4 nature of the request made and the expect that the
5 nature of the request is a pure and simple request.
6 There is nothing that is in the file or the developed
7 file which would suggest that ViewSonic is standing in
8 the way of that production and/or suggesting that the
9 OEM be accountable.

10 I don't see anything in this letter of
11 ViewSonic softballing it. I don't know that, by virtue
12 of ViewSonic adding a phrase to say, By the way, you are
13 required to do it under our contract, adds anything to
14 the letter because the order reviewed all of that. So,
15 I am not, on the record that I have before me, I am
16 satisfied that an appropriate request was made, request,
17 demand, I don't really see that there be any difference
18 in the context of the way this is teed up. I'd like to
19 see the second request for purposes of seeing what the
20 follow-up was. If the follow-up is consistent in its
21 language with its first request, then I think it just

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22 buttresses my view that the -- it is what it is. It's
23 one step removed. I expect that ViewSonic could force
24 an issue independent of this Court action somewhere

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1 else, but I don't -- I didn't contemplate that and I
2 really don't anticipate that Judge Farnan would have
3 contemplated that by virtue of accepting my findings and
4 recommendations.

5 So, on this record, I am not convinced that
6 ViewSonic didn't make an appropriate effort to get the
7 information from the OEM.

8 I do, however, want to see the follow-up.

9 MS. ROMAN: Your Honor, I will get the
10 follow-up, as I told Mr. Christenson, as soon as I can
11 get it. I will produce it to him as well. And I will
12 continue making those efforts today to get it as soon as
13 possible. The truth; Your Honor, I don't even know if
14 the follow-up letter has even gone out.

15 SPECIAL MASTER POPPITI: Okay.

16 MS. ROMAN: Given the general counsel's
17 traveling, and I don't know if he has been able to

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18 authorize it being sent.

19 SPECIAL MASTER POPPITI: I understand. I'd
20 like to see whatever is done.

21 MS. ROMAN: Yes, Your Honor.

22 SPECIAL MASTER POPPITI: Just a moment.

23 Next, please.

24 MS. BRZEZYNSKI: I believe the next issue is

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1 LPL's request for a protective order relating to
2 Tatung's request for a deposition of Rebecca Rudich, an
3 attorney with the law firm of McKenna, Long & Aldridge.

4 May I proceed?

5 SPECIAL MASTER POPPITI: Sure.

6 MS. BRZEZYNSKI: Your Honor, LPL moves for a
7 protective order because Rebecca Rudich's proposed
8 deposition has grown from a very well limited one issue
9 deposition where Tatung initially said it was willing to
10 accept a declaration to what has essentially become a
11 fishing expedition for inequitable conduct in areas
12 where Ms. Rudich does not have any relevant information
13 at all.

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14 A brief review of the history, I think, is
15 necessary here.

16 Tatung initially noticed Miss Rudich's
17 deposition on March 1st of this year relating solely to
18 its unfounded allegations that McKenna, Long & Aldridge
19 violated the protective order in this case. As Your
20 Honor is aware, ML A, my firm, spent considerable time
21 and expense responding to those unfounded allegations
22 and providing privileged documents for in camera review.
23 That resulted in a ruling by Your Honor that ML A had
24 not violated the protective order.

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1 During that process, ML A clearing opposed
2 the taking of Miss Rudich's deposition and Tatung
3 withdraw its subpoena of Miss Rudich. That was clearly
4 stated by Mr. Merideth on the record and then confirmed
5 by him in his March 16th letter, which is Exhibit D to
6 Tatung's submission attached to his 8/1 letter.

7 In that March 16th letter, however, Tatung
8 did state, in the second paragraph, that it still needed
9 testimony from Rebecca Rudich on, quote, one very

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10 limited issue, end quote. The letter went on to say
11 that, quote, The testimony will be limited to only
12 classes to a specific PTO office action regarding the
13 '079 patent related to an IBM product, end quote.

14 The letter also stated that Tatung was
15 willing to accept the declaration in lieu of a
16 deposition. Tatung offered to provide a draft
17 declaration of what it wanted and we received that draft
18 declaration on March 29th. That draft declaration sent
19 by Mr. Merideth was based on Exhibit F to Tatung's
20 submission and Exhibit 1 to LPL's August 1st submission.

21 SPECIAL MASTER POPPITI: I have reviewed
22 that.

23 MS. BRZEZYNSKI: Then, as you can see, Your
24 Honor, that draft declaration was solely limited to

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1 Ms. Rudich's response to its 2006 office action in the
2 '079 application, and identification of what Ms. Rudich
3 meant, as rear tray in an IBM 9516 product, and that's
4 it. That declaration did not include any reference to
5 what Ms. Rudich meant by spot mounting. In fact, there

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6 was nothing further in that draft declaration about any
7 other aspect of the '079 patent prosecution.

8 There also was never any suggestion in that
9 declaration or otherwise that Miss Rudich would be asked
10 about the prosecution of the patents in suit. There was
11 also no suggestion or reference in that draft
12 declaration that Tatung wanted to ask her, Ms. Rudich,
13 about any potential prior art other than the IBM 9516
14 product.

15 All along, for months, a declaration was
16 only ever limited to the identification of the term
17 "rear tray" relating to the office action response and
18 '079 continuation application.

19 Even when you look at the two declarations
20 submitted by LPL, which are exhibits four and six to
21 LPL's August 1st submission, you reach the same
22 conclusion. I will adhere that LPL does take issue with
23 the statement made by Tatung in its August 1st letter
24 that it was, quote, strung along by LPL who, apparently,

1 had never intention of ever agreeing to a meaningful

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2 declaration or deposition, end quote.

3 That statement cannot be anymore false and
4 it's frankly unacceptable that that sentence was
5 included in Tatung's submission given the history of LPL
6 working very quickly to submit revised declarations to
7 Tatung for its review.

8 First, LPL sent a draft declaration on April
9 23rd, after first sending comments to Tatung, which
10 Tatung then responded one day later and said that it was
11 concerned -- excuse me, three days later, on April 26th,
12 that it was concerned that LPL's initial draft contained
13 subjective observations and commentary by Ms. Rudich.
14 We then removed all subjective observations and
15 commentary at Tatung's request and sent a revised draft
16 just one day later, on April 27th.

17 Again, that is declaration, like all prior
18 declarations, focused solely on the office action
19 response and an identification of what Ms. Rudich meant
20 by "rear tray," and that's it.

21 Now, months later, after the close of
22 discovery, Tatung has increased the scope of the
23 requested deposition even though they withdrew their
24 deposition subpoena. Their 8/1 submission requesting a

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1 much broader deposition is not only untimely but,
2 frankly, it is easy to dispense with.

3 As you look at the 8/1 submission, and, Your
4 Honor, for the first time Tatung seeks testimony from
5 Miss Rudich relating to the prosecution history for the
6 patents in suit.

7 Tatung has a fundamental misunderstanding.
8 Rebecca rude did not prosecute the patents in suit.
9 Tatung must have known this since at least 2005, the
10 patent prosecution history documents. Those are public
11 records. Their initial disclosures filed on July 29th,
12 2005, identified son junction and three other attorneys
13 or patent agents formerly with McKenna or its
14 predecessor firm in addition to Rebecca Rudich as
15 prosecuting attorneys.

16 SPECIAL MASTER POPPITI: Did she not
17 supervise?

18 MS. BRZEZYNSKI: No, not this. This is what
19 she did, and I will tell you exactly what she did: She
20 was not the supervisor for the patents in suit, Your

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21 Honor. It was Sung Jung and Tatung must have known
22 this. If they wanted, at any time, to depose the
23 prosecuting attorney for these patents in suit, they
24 should have noticed the deposition of one of the

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1 prosecuting attorneys and it never did so.

2 We have never represented, that Rebecca rude
3 prosecuted the patents in suit. What she did, and we
4 went back to verify that we were actually correct, she
5 only signed three documents, in each of the patents in
6 suit, and I will tell you exactly what they were. One
7 was a change of address form that was submitted in each
8 patent case after our merger, so that was submitted and
9 signed by her as she did for many, many cases.

10 The second was a non-substantive notice of
11 appeal filed in each of the two patent cases, patents in
12 suit. There, she signed them for Sung Jung because the
13 deadline was engineering and son, who had directed its
14 preparation of that notice of appeal, was unavailable.
15 She did not prepare it. She did not direct its
16 preparation.

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17 The third is she signed -- she signed only
18 one son standard active document in each case, and that
19 was a primary amendment signed in March 2002. It was
20 actually attached by Tatung to its submission.

21 As you can see, she signed that over Sung
22 Jung's signature block, because he was not available.
23 That document was either prepared by Mr. Jung or for him
24 at his direction. Rebecca rude was not involved in the

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1 preparation of that document at all.

2 Then we have, Your Honor, Tatung's letter of
3 8/three. It's a second submission. I submit to you,
4 Your Honor, that Your Honor should disregard that
5 submission as untimely. The deadline is clearly 8/1,
6 two days earlier, although Tatung states in that letter
7 that it obtained an LPL module on or about August 2nd,
8 2007, I frankly find that terminology curious on or
9 about," that's right it received that product one day
10 earlier or they didn't.

11 Regardless of that fact, Your Honor, LPL
12 simply disputes the allegation in that 8/3 submission

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13 and disagrees that, regarding the relevance of the LPL
14 product. Regardless, Rebecca Rudich's deposition
15 relating to that LPL product is entirely not relevant or
16 necessary. Rebecca rude did not prosecute the
17 patents-in-suit and she never knew about that LPL
18 LC056N1 module listed in the letter.

19 We are agreeable to offering a simple
20 declaration that says that she never knew about that
21 module if that will suffice.

22 Accordingly, Tatung's request, in its August
23 3rd letter to depose Rebecca Rudich regarding, quote,
24 her knowledge of L G products that practiced the claimed

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1 invention, any investigation that she performed and her
2 general custom and practice when prosecuting patents,
3 among other things, end quote, should be denied. She
4 can't answer those questions if she did not prosecute
5 the patents in suit.

6 Tatung never noticed the depositions of any
7 of the prosecution attorneys and it cannot legitimate he
8 will claim that it ever intended to ask Rebecca rude

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9 about these issues. "

10 SPECIAL MASTER POPPITI: Let me just ask you
11 a question about process for a moment because I don't
12 have, in mind, all of the documents that you just
13 referred to in terms of what Rebecca rude did or didn't
14 do with the patent office. If they are in front of me
15 in these applications, point me to them.

16 MS. BRZEZYNSKI: Sure, Your Honor. I will
17 point you to the only substantive document that Rebecca
18 ever signed rolling to the prosecution of the patents in
19 suit are attached as Exhibits B and C to Tatung's
20 submission.

21 SPECIAL MASTER POPPITI: Let me just pause
22 and look at those for a moment.

23 MS. BRZEZYNSKI: Sure.

24 SPECIAL MASTER POPPITI: The submission of

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1 August 3rd, 2007.

2 MS. BRZEZYNSKI: Not the August 3rd, Your
3 Honor. The August 1 submission.

4 SPECIAL MASTER POPPITI: It's the August 1

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5 submission. I had the August 3rd on top of it.

6 You would agree with me that, to the extent
7 that she signed that document, she was prosecuting, at
8 least, in part, the application?

9 MS. BRZEZYNSKI: Your Honor, I can only
10 represent to you what I have been told, that she did not
11 prosecute this application. She merely signed it on
12 son's behalf because he was not available to sign that
13 day when it was finalized. She did not in any way
14 prepare that amendment. She did not direct its
15 preparation. She did not comment on its preparation.
16 She simply signed it for son because he was absent.

17 SPECIAL MASTER POPPITI: Blue, counsel --

18 MS. BRZEZYNSKI: That's all I can tell you.
19 She cannot offer any testimony relating to that
20 amendment, why is this drafted, why it was prepared at
21 all?

22 SPECIAL MASTER POPPITI: Well, she may have
23 -- she may be in a position to say that, and perhaps it
24 would be better for me to be even better informed about

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1 what a patent prosecutor does. But I just have to
2 expect that when you sign a document, through the United
3 States patent office, is it any different from, if you
4 will, local counsel signing a document that may be
5 prepared by another office in everyone certainly
6 understands, at this Bar, that local counsel, when doing
7 that, certifies that everything in there is correct and
8 accurate, in substance, certifies that it's been read
9 and understood, and, if necessary, would be called upon
10 to answer questions about it if lead is not able to, or
11 each if lead is there. The Court has the right to look
12 to local counsel -- and, please, my friends at the Bar,
13 tell me if you think this is inaccurate -- and say, What
14 do you mean by that?

15 MS. BRZEZYNSKI: I understand your point,
16 Your Honor. I can only add, based on what I understand
17 that it was represented to her that this was complete
18 and needed to be filed that day, Mr. Jung was not
19 available and she signed on his behalf. That's all I
20 can say.

21 Stepping back from that, Your Honor, Tatung
22 has known all along that the attorneys primarily
23 prosecuting this patent -- these patents in suit, it's

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24 not Rebecca Rudich. They can see from the patent

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1 prosecution history that it's Mr. Jung's name as well as
2 the name of one of our former associates, Ken Springer,
3 that primarily prosecuted these patents in suit and not
4 Rebecca Rude.

5 This is an after the fact untimely attempt
6 by Tatung to unfairly broaden the scope of a deposition
7 request that they withdrew months and months earlier.

8 If Tatung, at some point, wanted to depose
9 the prosecuting attorney, they could have informed us,
10 they could have noticed that deposition, and requested
11 and took the deposition of the prosecuting attorney. I
12 mean, they identified Sung Jung, as well as all the
13 other attorneys that signed documents in their initial
14 disclosures. They were aware, Sung Jung, Kenneth
15 Springer and the other attorneys --

16 SPECIAL MASTER POPPITI: Let me ask this
17 question, and I don't want to dwell on this, but
18 somebody remind me, if you will, when I was dealing with
19 an issue involving Rebecca Rude, as was described

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20 earlier, am I correct in recalling that, as part of a
21 declaration that she signed, that she described, in some
22 words, that she supervised prosecution work?
23 MS. BRZEZYNSKI: She does generally
24 supervise prosecution work, Your Honor, but not for the

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1 patents in suit. We prosecute a very large number of
2 patents.

3 SPECIAL MASTER POPPITI: Sure.

4 MS. BRZEZYNSKI: At this firm. She has been
5 involved in the continuation application, '079
6 continuation application. She was not involved in the
7 prosecution of the patents in suit, however.

8 SPECIAL MASTER POPPITI: Let's focus on the
9 fact, then, that she was -- she did prosecute a
10 continuation patent, and maybe I should be hearing from
11 Tatung's point of view, what responsibility Rebecca rude
12 has when she is prosecuting a continuation patent with
13 respect to its parent, because I don't know that that's
14 been developed in the papers. Is that an appropriate
15 question?

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16 MS. BRZEZYNSKI: You are correct, Your
17 Honor, that has not been developed in the papers at all.
18 That also has not been requested by Tatung until its 8/1
19 submission. Prior to that date, they only ever
20 requested information with regard to one office action
21 response and her identification of the words "rear
22 tray." That's it.

23 SPECIAL MASTER POPPITI: Let's take that
24 piece and let me hear from Tatung.

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1 MR. MERIDETH: Yes, Your Honor. It is
2 correct that, initially, we indicated that the
3 deposition of Ms. Rudich would be taken with respect to
4 the IBM reference that she made with respect to the '079
5 application because, at that time, that was the only
6 item of prior art that we were aware of.

7 Since that time, two items of prior art have
8 surfaced, which is the 500 LC and, most recently, the
9 module that is attached to the August 3rd letter, the LC
10 056 N one.

11 SPECIAL MASTER POPPITI: Right.

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12 MR. MERIDETH: And it is our view that,
13 particularly the latter document, which was only
14 produced a couple of weeks ago, are ripe for
15 examination. We happen to believe that Ms. Rudich has
16 supervised the filing of patents, she has been involved
17 in at least two substantive filings with respect to the
18 patents in suit. She should know what the policies are
19 with respect to investigation of prior art.

20 If she is unaware of any investigation that
21 was done, if she is unaware of any policy with respect
22 to investigation, and if she doesn't know anything about
23 either the 500 LC or about the August 3 identified
24 module, then she can say so. But I believe that we are

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1 entitled to take her deposition because I believe that
2 that, in addition to the issue of the IBM module, is
3 crucial testimony with respect to both the infringement
4 issues and with respect to the issue of inequitable
5 conduct.

6 SPECIAL MASTER POPPITI: Let me --

7 MR. MERIDETH: I want to add one other

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8 thing, that is, within the past two weeks, Miss Rudich
9 has filed a further disclosure with respect to the '079
10 application in which she has listed other prior art that
11 we have identified in our interrogatory responses
12 including the Sharp modules which are in -- I think
13 within the past month, excuse me, which are very, very
14 similar in design to the N module, if we want to call it
15 that, and it -- except that the August 3rd pictures, as
16 you see, indicate that there is a stand off in the back,
17 the first frame of that module.

18 So, we believe that the fact that she has
19 filed this further disclosure is, again, another area
20 that we would want to inquire and to find out, for
21 example, why she disclosed the sharp modules but did not
22 disclose this particular module.

23 SPECIAL MASTER POPPITI: Let me ask a
24 question because I, quite frankly, got a wee bit

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1 distracted when I was reading the response to the patent
2 office action in light of the history of the
3 declarations that has been described for me. And maybe

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4 this means nothing, and if it does, somebody tell me
5 that it doesn't mean anything, but one of the issues
6 that I think Tatung has raised is the question as it
7 relates to impeachment of LPL's position.

8 Let me ask this question: Do you find the
9 initial declaration was found to be unacceptable by LPL
10 was based on, as I understand it, the assertion that
11 Miss Rudich did not have the benefit of a device to
12 examine and was not using photographs for purposes of
13 responding to the Patent Office action; am I correct so
14 far?

15 MR. MERIDETH: I don't believe so, Your
16 Honor. I believe she did have photographs, and one of
17 the reasons that there was a hiatus in the exchanges of
18 the declarations was because we were provided with
19 copies of those photographs which were merely a
20 photocopy of photographs and they were black and white;
21 you couldn't make out the photograph, and Mr. Ambrozy
22 indicated that he would obtain better copies, which he
23 ultimately did, about a week before my final letter to
24 him, and, so, she did identify photographs.

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1 SPECIAL MASTER POPPITI: I may have been
2 mistaken. But with respect to the device, not having
3 the opportunity to look at the device, that was part of
4 the concern; is that --

5 MS. BRZEZYNSKI: That's absolutely correct,
6 Your Honor. Our two concerns were Rebecca Rudich did
7 not look at any actual device in preparing office action
8 response, and the other concern was along the lines that
9 you said, she did not view the photographs that
10 Mr. Merideth had submitted with his draft declaration,
11 which were different photographs, different labels --

12 SPECIAL MASTER POPPITI: Then I was, at
13 least I remembered something about the photographs by
14 virtue of asking the question.

15 MS. BRZEZYNSKI: Yes.

16 SPECIAL MASTER POPPITI: Let me tell you
17 what troubled me: I expect you all have her remark in
18 front of you; if not, would you please put them in front
19 of you.

20 MS. BRZEZYNSKI: By "remarks," which draft
21 declaration, Your Honor?

22 SPECIAL MASTER POPPITI: I am looking be

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23 signed this one submission at Exhibit E and I am looking
24 at page six of the United States patent --

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1 MS. BRZEZYNSKI: Your Honor, you cut off.

2 Which exhibit, please?

3 SPECIAL MASTER POPPITI: Start you at page 6
4 of that exhibit.

5 MS. BRZEZYNSKI: Which exhibit again?

6 SPECIAL MASTER POPPITI: "E" as in Edward.

7 MS. BRZEZYNSKI: "E" as in Edward. Thank
8 you. Page 6?

9 SPECIAL MASTER POPPITI: Are you both there?

10 MS. BRZEZYNSKI: Yes, I am, Your Honor.

11 SPECIAL MASTER POPPITI: Mr. Merideth?

12 MR. MERIDETH: Yes, Your Honor.

13 SPECIAL MASTER POPPITI: Bottom of page 6,
14 and I will just start for purposes of context with the
15 sentence that begins, "So nothing in the IBM 951 six
16 teaches or suggests the first frame being fixed to the
17 rear part of the housing. Applicants refer the examiner
18 to the cited figure on page 9 of the IBM 951 six

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19 reference. At best, the figure shows the screws, two,
20 go through the back cover from the back to the front.
21 There is no teaching or suggestion that there is any
22 fixing at the first frame. "

23 The next sentence reads, "And, in fact, in
24 the physical device, the fixings occur at the front

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1 housing of the IBM 951 six."

2 If you will also look at page 7 of
3 Miss Rudich's remarks, second full paragraph, the last
4 four sentences of that paragraph virtually mirror what I
5 just read to you. I can tell you that when I read that,
6 in the context of the -- of looking at the
7 representation that she did not have a device from which
8 to make these remarks, and I read twice, and, in fact,
9 in the physical device, there is no such fixing of the
10 rear frame to the rear portion of the housing of the IBM
11 951 six, I had to sit up and read it several different
12 times.

13 MS. BRZEZYNSKI: Your Honor, I understand.

14 I asked Ms. Rudich that question and she says that she

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15 did not have the device, she has not seen the device,
16 she was relying solely on the reference documents, the
17 IBM 9516 reference document and also the pictures that
18 she had of the device, the pictures of the physical
19 device that she saw at the time. "

20 SPECIAL MASTER POPPITI: Mr. Merideth.

21 MR. MERIDETH: I think she had the device,
22 Your Honor, as I put in the original declaration.

23 MS. BRZEZYNSKI: Oh, come one. We have
24 represented that she doesn't have the device. She is

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1 willing to sign a declaration to that effect.

2 SPECIAL MASTER POPPITI: Counsel, "Oh, come
3 on" is not part of an argument that gets made in
4 Delaware.

5 MS. BRZEZYNSKI: I apologize, Your Honor.

6 SPECIAL MASTER POPPITI: Thank you.

7 MR. MERIDETH: I think that is an issue,
8 Your Honor, which needs to be addressed.

9 SPECIAL MASTER POPPITI: Mr. Merideth, just
10 a second. It's one that I raised, Mr. Merideth didn't.

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11 It's one that I told you I paused over and read several
12 times. If she didn't have the device, but whether she
13 did have the device, there is a sentence in there that
14 at least, if you say that she didn't, is unclear to me,
15 and if it is unclear and there is an issue with respect
16 to the candor of the Patent Office, and we will talk
17 about that in a moment, or if there is an issue with
18 respect to impeachment of LPL's position as it relates
19 to infringement or patent ability, she was involved in
20 the patent prosecution of this continuation patent, was
21 she not?

22 MS. BRZEZYNSKI: She certainly was, Your
23 Honor.

24 SPECIAL MASTER POPPITI: And that statement,

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1 in that document, is either crystal clear, and if it's
2 crystal clear, it says to me that she is looking at a
3 device, and if it's not, she should be able to explain
4 it, shouldn't she?

5 MS. BRZEZYNSKI: And she has attempted to do
6 so through her declaration that is she's submitted.

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7 SPECIAL MASTER POPPITI: Then why is the
8 declaration -- I understand the whole process of wanting
9 to stream line this whole effort, but if, ultimately, a
10 declaration is not acceptable and if it's not acceptable
11 because there are issues that need to be explored, why
12 is that a problem?

13 MS. BRZEZYNSKI: Your Honor, Tatung has
14 never indicated that it was concerned with that
15 sentence. In fact, when Miss Rudich, in her first draft
16 declaration, included, you know, discussion as to why
17 she used certain terms, they wanted those references
18 removed from her declaration. They didn't want her --

19 SPECIAL MASTER POPPITI: I understand that.
20 I understand why you wouldn't want that kind of
21 information in the declaration. You can't cross-examine
22 it.

23 MS. BRZEZYNSKI: I understand. So we have
24 removed that. They have never raised this issue. We

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1 are willing to provide a declaration in response to any
2 questions they have relating to this office action.

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3 They only ever raised the term "rear tray,"

4 Your Honor. They never raised anything else at all.

5 Now Mr. Merideth --

6 SPECIAL MASTER POPPITI: That's an

7 appropriate reflection of the history, is it not?

8 MR. MERIDETH: Your Honor, the initial draft

9 declaration that I prepared talked about her examination

10 of the physical device because I believed, based upon

11 the office action response, that she had, in fact,

12 examined the physical device.

13 One of the things that she said in response

14 to that initial declaration, or Miss Brzezynski said,

15 was that she didn't have a physical device in her

16 presence. I find that hard to believe. I think it is

17 at least irresponsible to make the types of

18 representation that is she made. If she didn't have the

19 physical device in her possession, it certainly suggest

20 that is she had the physical device in her presence.

21 One of the reasons why we believe that the declaration

22 is not sufficient is because we will not have an

23 opportunity, or we would not have an opportunity to

24 cross-examine her with respect to the various statement

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1 that is she's made. And I don't know what she is going
2 to say, but I believe that my client has a right to
3 cross-examine her about what she did say and about what
4 she knew at the time and what her purpose was in
5 describing the physical device and the two references
6 that you made that, certainly, brought me to that
7 conclusion, which is reflected in the original
8 declaration that I prepared. And if she didn't look at
9 a physical device, she certainly still described
10 something that we could use to impeach the testimony.

11 SPECIAL MASTER POPPITI: You just faded out,
12 Mr. Merideth. I lost your last phrase.

13 MR. MERIDETH: She says that the IBM
14 reference is a front mounted device.

15 SPECIAL MASTER POPPITI: Yes, she does.

16 MR. MERIDETH: And in her responsive
17 declaration, she tries to back off that position by
18 saying what she really meant was that the tray it was
19 first frame and blah, blah, blah, blah. Well, that
20 isn't what she said. And I believe that I have a right
21 to cross-examine her as to what she did say. To the

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22 extent that she is going to be called upon as a witness
23 in the trial and is going to testify that she meant
24 something other than what she said or the argument is

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1 going to be made that what she said is ambiguous, I have
2 a right, or I should have a right to cross-examine her
3 as to what exactly she said and what she meant at the
4 time because I think it's very important.

5 Now, we are going to have Mr. Bohannon
6 saying that the method that Tatung uses to mount its
7 modules infringes the patent because it's rear mounted
8 and the method that is used is virtually identical to
9 the method that she describes, that is, the screws go
10 from the back of the case through the LCD bracket, which
11 is what she calls a "tray," through the first frame and
12 into the front case or front housing. And she says
13 that's front mounting and Mr. Bohannon says that's rear
14 mounting. It seems to me that we are entitled to get
15 her testimony on that subject.

16 She was LPL's representative making a
17 representation under the circumstances of a patent

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18 prosecutor to a PTO.

19 MS. BRZEZYNSKI: Your Honor, may I respond?

20 SPECIAL MASTER POPPITI: Sure.

21 MS. BRZEZYNSKI: First, just so the record

22 is clear, we advised Mr. Merideth on April 3rd that

23 Miss Rudich never viewed a device. On that same day,

24 Mr. Merideth responded by e-mail, and it's that e-mail

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1 is attached as Exhibit 3 to LPL's submission, he

2 acknowledges in that letter that he had assumed that

3 rude had an IBM 9516. If she did not, then that needs

4 to be changed. If she relied on photos, then we should

5 attach the photos. We can -- I am sorry.

6 SPECIAL MASTER POPPITI: I am reading that.

7 I see that.

8 MS. BRZEZYNSKI: And I point that out just

9 to let you know that we informed Tatung very early that

10 she did not review a device. Mr. Merideth did not

11 question that and we, thereafter, submitted our revised

12 declaration.

13 Now, so I don't believe was there any issue

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14 ever raised by Mr. Merideth questioning whether or not
15 Ms. Rudich had ever seen a device until today.
16 Now, putting that aside, Your Honor,
17 Miss Rudich's statements to the PTO, in connection with
18 a continuation application, are simply not relevant here
19 for infringement for several reasons. One, because
20 Tatung's accused products also meet the claim
21 limitations of the patents in suit, it doesn't matter
22 whether the taught's method of mounting or its accused
23 products also are in common with the IBM product.
24 Second, if Tatung is attempting to assert

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1 that Miss Rudich's statements are somehow relevant for
2 claim construction, that's already been decided by Your
3 Honor, is now on appeal, and that would be extrinsic
4 evidence.
5 Third, the claims in the '079 application
6 are different from those in the patents in suit and the
7 claim referenced in the office action response, in the
8 '079 application, is specifically not in the patents in
9 suit.

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10 So I would submit to you, Your Honor, that
11 Miss Rudich's testimony relating to her statements to
12 the PTO in its office action response in connection with
13 a continuation application, are simply not relevant here
14 or, in this case, not necessary.

15 I am also going to point out, Your Honor,
16 that the inventors of the patents in suit were deposed
17 for 11 days.

18 SPECIAL MASTER POPPITI: I am aware of that.

19 MS. BRZEZYNSKI: And they were asked about a
20 500 LC product referenced by Mr. Merideth earlier. They
21 were asked, at length, about front mounting. They were
22 also asked, at length, about whether there were any LPL
23 or LGE products that had any fastening elements on the
24 back side of the flat panel display device which is

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1 predated the invention of rear mounting. They also were
2 asked whether any such flat panel display device
3 was submitted to the PTO.

4 The defendants have clearly asked the
5 inventors this at extreme length. There is no need to

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6 burden Miss Rudich with a deposition on these same
7 issues especially when she did not prosecute the patents
8 in suit.

9 MR. MERIDETH: Your Honor, I think that Miss
10 Brzezynski has really put her finger on the central
11 point here. We did examine the inventors at great
12 length and we did ask the inventors, not only in
13 Mr. Kim, in his capacity as an inventor, but Mr. Kim in
14 his capacity as a 30(b)(6) witness for LPL, whether
15 there were any L G products which practiced rear
16 mounting, and that those topics were topics eight and 32
17 in the notice of deposition for the 30(b)(6) deposition,
18 and he testified unqualifably that there were no such
19 products.

20 If you look at our August 3 submission,
21 which shows a Gold Star product, "Gold Star" being one
22 of the names used by LG Electronics, the "LG" standing
23 for Lucky Gold Star, it's clear that Mr. Kim either was
24 not telling the truth or was misinformed in his capacity

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1 as a 30(b)(6) witness because you can clearly see that

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2 there are only rear mounting features and there are no
3 front mounting features.

4 So, we now need to determine whether Mr. Kim
5 was telling the truth, what the prosecutors of the
6 patent knew about the prior art, and she's put her
7 finger right on the subject. If no inquiry was made and
8 nobody knew anything about it, we need to know that.

9 If they did know something about it, we are
10 entitled to know that as well. And it is true that we
11 raised these very questions with Mr. Kim, and, indeed,
12 showed Mr. Kim the sharp module that it appears that
13 this device, the LC 056 N one copies, and he said he had
14 never seen anything like that, before he doesn't know
15 anything about it.

16 So, but here we have a product in 1996 that
17 has rear mounting and practices rear mounting.

18 MS. BRZEZYNSKI: Your Honor, obviously, we
19 dispute Tatung's characterization of the product
20 attached to its August 3rd submission.

21 Regardless of that, Your Honor, Miss Rudich
22 has never seen that module. If she -- she is not in a
23 position to offer any testimony whatsoever about that
24 product at all. It's clear Tatung has conceded they

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1 have exhausted their questioning on that issue. They
2 asked the inventor. The inventor said he didn't see it;
3 he had never seen a product like that.

4 MR. MERIDETH: The 30(b)(6) witness who had
5 -- who was noticed to testify specifically on the issue
6 of any prior art, including LGE products, and he said
7 that he was unaware of any LGE product like, not only
8 the practiced rear mounting like this one or that was
9 like the sharp module that he was shown, which is
10 precisely what this is.

11 SPECIAL MASTER POPPITI: There are two
12 things.

13 MR. MERIDETH: If she didn't know about it,
14 we need to know why she didn't know about it.

15 SPECIAL MASTER POPPITI: There are a couple
16 things here. One thing that I do want some brief
17 additional development. I do not accept the proposition
18 that Miss Rudich did not prosecute the patents in suit.
19 I understand that she may not have been considered first
20 chair, but she signed documents that suggest to me that

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21 she was prosecuting the patents in suit. She was
22 prosecuting a continuation patent, and what I would like
23 for you to develop for me, very briefly, just point me
24 in the direction of any case law, if you have it, to

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1 what is the impact if there is any inequitable conduct
2 with respect to the continuation patent on the patent in
3 suit.

4 Are you with me?

5 MS. BRZEZYNSKI: Yes, Your Honor.

6 SPECIAL MASTER POPPITI: And I'd like you to
7 do that for me as quickly as possible so that I can --
8 we have a date when we are going to reconvene, so that I
9 can have that before that date. I don't need argument.
10 I just need -- Mr. Merideth, it's your position, if you
11 will, that it relates to inequitable conduct, and I'd
12 like to see the development of that by just point me in
13 the direction of case law. If you need to comment on
14 it, no more than two pages.

15 MR. MERIDETH: I will be happy to do that,
16 Your Honor. There is one thing that I want to make

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17 clear, however, and, that is, I believe miss Rudich's
18 testimony relates to two issues. One relates to the
19 prosecution of the patents in suit. The other is to the
20 prosecution of the continuation patent. But -- the
21 continuation application.

22 SPECIAL MASTER POPPITI: Right.

23 MR. MERIDETH: But the statements that she
24 makes don't describe the claims of the continuation

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1 patent. They describe a product and they describe the
2 method of mounting that product and the features of that
3 product. I don't think the claims have anything to do
4 with it. She describes the IBM product. That IBM
5 product, we have obtained physical samples of. It will
6 be in front of her, it will be in front of you, and it
7 will be in front of the jury to determine whether or not
8 the methods that are used with respect to that IBM
9 product are the same as the ones -- are those the same
10 practice that Tatung uses with respect to mounting the
11 accused product. We believe that they are one in the
12 same and we believe that that is clearly relevant and

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13 will be at the center of the issue with regard to
14 non-infringement.

15 SPECIAL MASTER POPPITI: And I understand
16 that. And I -- I understand the argument; I accept the
17 argument, but I still want the issue to be developed on
18 the issue of the issue of inequitable conduct.

19 MS. BRZEZYNSKI: I am happy to respond on
20 the that issue but I'd like to say a couple things in
21 response to Mr. Merideth's statement. First, if
22 Mr. Merideth is intending to show the device to
23 Miss Rudich and then ask her to testify or draw
24 conclusions from that device in any way, I submit to you

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1 that is wholly inappropriate. It's in the nature of
2 expert testimony. We have an agreement from Tatung and
3 ViewSonic in this case that our experts are the sole
4 witnesses as to invalidity and infringement contentions
5 and that there be no testimony taken of factual
6 witnesses. The only testimony taken from factual
7 witnesses are simply what they knew existed before the
8 patents were filed but not why he or she contend that is

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9 a particular reference is or is not prior art.

10 SPECIAL MASTER POPPITI: You know, I
11 hesitate to give advice and guidance, but I certainly
12 tend to agree with what you have just said. But we
13 don't -- that's a different step in the process here.

14 MS. BRZEZYNSKI: I agree. I just wanted to
15 point that out, Your Honor.

16 I also wanted to quickly respond to
17 Mr. Merideth's comments earlier that Miss Rudich
18 recently submitted, in the '079 application prosecution
19 other prior art in an area that was recently identified
20 by Tatung in an interrogatory response, and I would
21 submit to you that that document was submitted to the
22 PTO because Tatung put it in issue in its interrogatory
23 answer and this firm has an obligation to put the PTO on
24 notice of asserted prior art.

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1 LPL is not conceding that those products are
2 prior art, but we had an obligation to put the PTO on
3 notice. That's why that submission was made.

4 SPECIAL MASTER POPPITI: I understand.

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5 MS. BRZEZYNSKI: Okay. I just wanted to
6 make sure that that point was made on the record, Your
7 Honor.

8 SPECIAL MASTER POPPITI: Okay.

9 MS. BRZEZYNSKI: With respect to your
10 request for additional research, can we agree to
11 simultaneous requests submitted?

12 SPECIAL MASTER POPPITI: Yes.

13 MS. BRZEZYNSKI: By the end of the day
14 tomorrow?

15 SPECIAL MASTER POPPITI: Mr. Merideth?

16 MR. MERIDETH: I am sorry. I didn't hear
17 what was said.

18 SPECIAL MASTER POPPITI: Would you agree to
19 submit simultaneous --

20 MR. MERIDETH: Yes, that's acceptable.

21 SPECIAL MASTER POPPITI: End of day
22 tomorrow? Is that acceptable as way.

23 MR. MERIDETH: End of day California time
24 tomorrow?

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1 SPECIAL MASTER POPPITI: Yes, California
2 time.

3 MR. MERIDETH: Okay. That's fine.

4 MS. BRZEZYNSKI: What time would that be,
5 Your Honor.

6 Q. I just want to have a clear understanding?

7 MR. MERIDETH: It would be 5:00 Pacific
8 time, 8:00 eastern time.

9 MS. BRZEZYNSKI: That's fine.

10 MR. MERIDETH: That's what I have in mind
11 anyway.

12 SPECIAL MASTER POPPITI: That's fine. I
13 think that that does it for purposes of today, does it
14 not?

15 MR. CHRISTENSON: Your Honor, LPL has H just
16 a couple quick things to raise. First of all, we are in
17 the process of confirming that we are going to have all
18 of the updated 2007 sales information from the
19 defendants that we need and we discussed that with them
20 and we are confident that that's going to be resolved to
21 the extent it's not already resolved, but if it's not
22 resolved, I would like the opportunity to address that
23 in our call on Monday because that's information we need

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24 for our damages expert.

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1 SPECIAL MASTER POPPITI: Okay.

2 MR. CHRISTENSON: And then the other issue
3 is something that Mr. Ambrozy wanted to address.

4 MR. AMBROZY: Your Honor, Rel Ambrozy. We
5 have been in contact with both Tatung and ViewSonic. In
6 regard to Tatung, we have been seeking documents that
7 were at issue during the deposition of one of their
8 30(b)(6) witnesses and we have asked for, for example,
9 assembly instructions and some information pertaining to
10 the actual modules used in the monitors that they sell.
11 We haven't been able to reach any agreement on that, and
12 so we'd like to bring a motion to compel these documents
13 and we can do it in a few page letter on each topic to
14 Your Honor, we could have it to Your Honor by the end of
15 day tomorrow and hopefully to be held R heard on the
16 13th. The second issue is we have approached both
17 ViewSonic and Tatung to allow us to re-inspect some of
18 the accused devices as well as the prior art devices,
19 and although our expert has seen these devices before,

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20 because of Your Honor's claim construction, in certain
21 instances, Your Honor's claim construction was neither
22 Tatung's nor ViewSonic's nor LPL's, and, therefore,
23 there was a nuance that was inserted because of your
24 claim construction that was not taken into consideration

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1 when these instructions were done the first time, and,
2 so, that's why we would need another inspection of these
3 monitors and we were rebuffed by the defendants and we
4 would like to brief that for Your Honor on the same
5 schedule.

6 SPECIAL MASTER POPPITI: Well, by "same
7 schedule," you mean for the 13th?

8 MR. AMBROZY: Yes, Your Honor, we'd submit
9 or paper tomorrow. Defendants could submit theirs by
10 Friday, and then, hopefully, we could have it heard on
11 Monday?

12 SPECIAL MASTER POPPITI: Any reaction to
13 that, please?

14 MS. ROMAN: Your Honor, I guess my only
15 concern would be given the lateness of the start time of

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16 the hearing on the 13th and the multiple issues that
17 might need to be dealt with that we might want to put
18 that issue on for a Tuesday call, but in terms of
19 briefing the issues, I understand the need to do so.

20 SPECIAL MASTER POPPITI: Well, then, let's
21 get the submittals accomplished as you described. I am
22 also concerned about whether or not I am going to be
23 able to deal with everything on Monday. I can start
24 earlier. I was just putting a late start, expecting

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1 that you would have the opportunity to continue to meet
2 and confer.

3 MS. BRZEZYNSKI: Your Honor, do you
4 anticipate further argument on the Rudich deposition
5 issue, and, if so, may I request that that argument be
6 held on Friday morning, perhaps --

7 SPECIAL MASTER POPPITI: I can't do Friday.
8 I have got an all day hearing in another patent case.

9 MS. BRZEZYNSKI: Could you, perhaps, do
10 Thursday? I leave on vacation this weekend.

11 SPECIAL MASTER POPPITI: Well, what I am

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12 going to need is some opportunity to look at the case
13 law that you have submitted. I wasn't anticipating
14 doing that before the weekend, but if -- you leave
15 Saturday?

16 MS. BRZEZYNSKI: I leave Sunday, Your Honor.

17 SPECIAL MASTER POPPITI: I would prefer -- I
18 do anticipate final discussion, if you will, on the rude
19 deposition, and I would prefer to do it at the end of
20 the day on Friday.

21 MR. MERIDETH: Your Honor, I am sorry, but I
22 am not going to be available on Friday. I am going to
23 be in the air. I apologize.

24 MS. BRZEZYNSKI: I am sorry to make this

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1 difficult.

2 SPECIAL MASTER POPPITI: It's not difficult.

3 It's a matter of -- then let's look at -- just one
4 moment. I am going to put you on mute for a moment. I
5 just have to check schedule. Hold on.

6 How is your schedules for Thursday, the 9th,
7 at five?

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8 MS. BRZEZYNSKI: I can do that time, Your
9 Honor.

10 MR. MERIDETH: That's acceptable for me,
11 Your Honor.

12 MS. BRZEZYNSKI: Than you for accommodating
13 me, Your Honor.

14 SPECIAL MASTER POPPITI: Wait one moment,
15 please. That would be 5:00 my time, eastern standard
16 time.

17 MS. BRZEZYNSKI: Yes, Your Honor.

18 MR. MERIDETH: Yes, Your Honor.

19 SPECIAL MASTER POPPITI: That's good. Okay.
20 Are there any other matters, then, please?

21 MR. CHRISTENSON: Not from LPL, Your Honor.

22 MS. ROMAN: Nothing from ViewSonic, Your
23 Honor.

24 MR. MERIDETH: Nothing from Tatung.

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1 SPECIAL MASTER POPPITI: Thank you all.

2 (The hearing was concluded at 5:35 p.m.)

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